DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2022-0075]

Notice of Intent to Prepare an Environmental Impact Statement for Model Years 2027 and Beyond Corporate Average Fuel Economy Standards and Model Years 2029 and Beyond Heavy-Duty Pickup Trucks and Vans Vehicle Fuel Efficiency Improvement Program Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of intent to prepare an environmental impact statement; request for scoping comments.

SUMMARY: In accordance with the National Environmental Policy Act (NEPA), NHTSA intends to prepare an environmental impact statement (EIS) to analyze the potential environmental impacts of new Corporate Average Fuel Economy (CAFE) standards for model years (MYs) 2027 and beyond passenger automobiles (referred to herein as "passenger cars") and non-passenger automobiles (referred to herein as "light trucks") and new fuel efficiency (FE) standards for MYs 2029 and beyond heavy-duty pickup trucks and vans that NHTSA will be proposing pursuant to the Energy Policy and Conservation Act of 1975 (EPCA), as amended by the Energy Independence and Security Act of 2007 (EISA). This notice initiates the process for determining the scope of considerations to be addressed in the EIS and for identifying any significant environmental matters related to the proposed action. NHTSA invites comments from Federal, State, and local agencies, Indian tribes, stakeholders, and the public in this scoping process to help identify and focus any matters of environmental significance and reasonable alternatives to be examined in the EIS.

DATES: The scoping process will culminate in the preparation and issuance of a Draft EIS (DEIS), which will be made available for public comment concurrently with the issuance of a

Notice of Proposed Rulemaking (NPRM). To ensure that NHTSA has an opportunity to fully consider scoping comments, scoping comments should be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. NHTSA will consider comments received after that date to the extent the rulemaking schedule allows.

ADDRESSES: You may submit comments electronically to the docket identified in the heading of this document by visiting the following website:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Alternatively, you can file comments using the following methods:

- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9826 before coming.
- *Fax:* (202) 493-2251.

Regardless of how you submit your comments, you should mention the docket number identified in the heading of this document.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Supplementary Information section of this document. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to

www.regulations.gov, as described in the system of records notice, DOT/ALL-14 FDMS, accessible through *www.transportation.gov/privacy.* In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: For technical issues, contact Vinay Nagabhushana, Fuel Economy Division, telephone: (202) 366-1452, e-mail: vinay.nagabhushana@dot.gov; for legal issues, contact Hannah Fish, Vehicle Safety Standards & Harmonization, Office of the Chief Counsel, telephone: (202) 366-1099, e-mail: hannah.fish@dot.gov or Stephanie Walters, Legislation & General Law Division, Office of the Chief Counsel, telephone: (202) 819-3642, e-mail: stephanie.walters@dot.gov, at the National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

In a forthcoming notice of proposed rulemaking (NPRM), the United States Department of Transportation (DOT), National Highway Traffic Safety Administration (NHTSA) intends to propose Corporate Average Fuel Economy (CAFE) standards for model years (MYs) 2027 and beyond passenger cars and light trucks (also referred to as light-duty (LD) vehicles), and fuel efficiency (FE) standards for MYs 2029 and beyond heavy-duty (HD) pickup trucks and vans[1]

[1] Heavy-duty pickup trucks and vans are defined in 49 CFR § 523.7. The category of vehicles that fall into the compliance category under this EIS includes pickup trucks and vans with a gross vehicle weight rating (GVWR) between 8,501 pounds and 14,000 pounds (also known as Class 2b through 3 vehicles) and anything that manufacturers choose to certify under § 523.7(b). Incomplete heavy-duty vehicles at or below 14,000 pounds GVWR may ultimately be considered as part of the subsequent HD CAFE rulemaking.

pursuant to the Energy Policy and Conservation Act of 1975 (EPCA)[2] as amended by the Energy Independence and Security Act of 2007 (EISA).[3, 4]

The National Environmental Policy Act (NEPA) instructs Federal agencies to consider the potential environmental impacts of their proposed actions and possible alternatives. In connection with the action described above, NHTSA will prepare an environmental impact statement (EIS) to analyze the potential environmental impacts of the proposed reasonable alternatives for CAFE and FE standards pursuant to NEPA and implementing regulations issued by the Council on Environmental Quality (CEQ),[5] DOT Order No. 5610.1C,[6] and NHTSA regulations.[7] To inform decisionmakers and the public, the EIS will analyze the potential environmental impacts of the agency's Preferred Alternative and a spectrum of reasonable alternatives, including a "no action" alternative.[8] As required by NEPA, the EIS will consider direct, indirect, and cumulative effects of the proposed action and alternatives.[9]

I. Purpose and Need

NHTSA has administered the CAFE program since the mid-1970s when Congress enacted EPCA. EPCA requires that the Secretary of Transportation, and NHTSA by delegation,[10] establish and implement a regulatory program for motor vehicle fuel economy as part of a comprehensive approach to Federal energy policy. In December 2007, Congress enacted the EISA, which significantly amended EPCA's program requirements, granting the DOT, and NHTSA by delegation, additional rulemaking authority and requirements. The

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[2] Pub. L. No. 94-163, 89 Stat. 871 (Dec. 22, 1975).
[3] Pub. L. No. 110-140, 121 Stat. 1492 (Dec. 19, 2007).
[4] NHTSA's fuel economy authorities are codified at 49 U.S.C. §§ 32901 *et seq*.
[5] 42 U.S.C. 4321–4347; 40 CFR Parts 1500–1508.
[6] *Procedures for Considering Environmental Impacts* (1979) (revised 1985), *available at* https://www.transportation.gov/office-policy/transportation-policy/procedures-considering-environmental-impacts-dot-order-56101c.
[7] 49 CFR part 520.
[8] 40 CFR §§ 1502.1, 1502.14.
[9] *Id.* § 1508.1(g).
[10] The Secretary has delegated responsibility for implementing fuel economy and fuel efficiency requirements under EPCA and EISA to NHTSA. 49 CFR § 1.95(a) and (j).

following sections discuss EPCA and EISA's requirements for setting CAFE standards for passenger cars and light trucks, and FE standards for HD pickup trucks and vans.

a. CAFE Standards for Passenger Cars and Light Trucks

EPCA requires that the Secretary of Transportation establish and implement a regulatory program for motor vehicle fuel economy as part of a comprehensive approach to Federal energy policy. As codified in Chapter 329 of Title 49 of the U.S. Code, and as amended by EISA, EPCA sets forth specific requirements concerning the establishment of CAFE standards for passenger cars and light trucks. EPCA requires the Secretary of Transportation to establish average fuel economy standards at least 18 months before the beginning of each model year and to set them at "the maximum feasible average fuel economy level that . . . the manufacturers can achieve in that model year."[11] The standards apply to each manufacturer's fleet average, not to the manufacturer's individual vehicles. The Secretary, after consultation with the Secretary of Energy and the Administrator of the Environmental Protection Agency (EPA), must establish average fuel economy standards separately for passenger cars and for light trucks manufactured in each model year.[12] In doing so, for the model years to be addressed, the Secretary of Transportation must set each passenger car and light truck standard at the "maximum feasible" average fuel economy standard for each model year.[13] When setting "maximum feasible" average fuel economy standards, the Secretary must "consider technological feasibility, economic practicability, the effect of other motor vehicle standards of the Government on fuel economy, and the need of the United States to conserve energy."[14] NHTSA construes the aforementioned statutory factors as including environmental and safety considerations.[15]

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[11] 49 U.S.C. 32902(a).
[12] *Id.* 32902(b)(1)–(2).
[13] *Id.* 32902(b)(2)(B), (f).
[14] *Id.* 32902(f).
[15] For environmental considerations, *see Center for Auto Safety v. NHTSA*, 793 F.2d 1322, 1325 n. 12 (D.C.Cir. 1986); *Public Citizen v. NHTSA*, 848 F.2d 256, 262-3 n. 27 (D.C.Cir. 1988) (noting that "NHTSA itself has interpreted the factors it must consider in setting CAFE standards as including environmental effects"); *Center for Biological Diversity v. NHTSA*, 538 F.3d 1172, 1196 (9th Cir. 2008); 40 CFR § 1500.6. For safety considerations, *see*, *e.g.*, *Competitive Enterprise Inst. v. NHTSA*, 956 F.2d 321, 322 (D.C.Cir. 1992) (*citing Competitive Enterprise Inst. v. NHTSA*, 901 F.2d 107, 120 n.11 (D.C.Cir. 1990)).

The standards for passenger cars and light trucks must be "based on 1 or more vehicle attributes related to fuel economy" and expressed "in the form of a mathematical function," and they may be established for not more than five model years at a time.[16] In addition, NHTSA must establish minimum standards for domestically manufactured passenger cars for each model year, which is 92 percent of the projected average fuel economy for the combined domestic and non-domestic passenger car fleet for each model year, calculated at the time the final rule establishing the passenger car standards for those model years is promulgated.[17]

NHTSA set the first fuel economy standards in 1977, applying to passenger cars beginning in MY 1978 and light trucks beginning in MY 1979. The stringency of the standards increased through MY 1985, and then changed little until MY 2005 for light trucks, when NHTSA reformed the light truck fuel economy program by introducing attribute-based standards, and MY 2011 for passenger cars, when NHTSA introduced attribute-based standards for passenger cars using new authority provided by EISA. CAFE standards have increased progressively for light trucks since MY 2005 and for passenger cars since MY 2011.

More recently, NHTSA has conducted its fuel economy rulemaking in coordination with EPA rulemakings that establish greenhouse gas (GHG) emission standards. In April 2010, NHTSA and EPA issued a joint final rule establishing fuel economy standards and GHG emissions standards[18] for MY 2012–2016 passenger cars and light trucks.[19] The CAFE standards were estimated to require a combined average fleet-wide fuel economy of 34.1 miles per gallon (mpg) by MY 2016.[20] Subsequently, on August 28, 2012, NHTSA and EPA issued a final rule setting CAFE and GHG emissions standards for passenger cars and light trucks for model years

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[16] 49 U.S.C. 32902(b)(3)(A)–(B).
[17] *Id.* 32902(b)(4).
[18] EPA issued GHG emissions standards pursuant to the Clean Air Act. *See* 42 U.S.C. 7521(a).
[19] *Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule*, 75 FR 25323 (May 7, 2010).
[20] The EPA GHG standards were estimated to require a combined average fleet-wide level of 250 grams/mile CO_2-equivalent for MY 2016, which is equivalent to 35.5 mpg if all of the technologies used to reduce GHG emissions were tailpipe CO_2 reducing technologies. The 250 g/mi CO_2 equivalent level assumed the use of credits for air conditioning improvements worth 15 g/mi in MY 2016.

2017 and beyond.[21] Consistent with its statutory authority, NHTSA developed two phases of passenger car and light truck standards. The first phase, covering MYs 2017–2021, included final standards that were projected to require, on an average industry fleet wide basis, a range from 40.3-41.0 mpg in MY 2021. The second phase of the CAFE program, covering MYs 2022–2025, included standards that were not final, due to the statutory requirement that NHTSA set average fuel economy standards not more than five model years at a time. Rather, NHTSA wrote that those standards were "augural," meaning that they represented its best estimate, based on the information available at that time, of what levels of stringency might be maximum feasible in those model years. NHTSA projected that those standards could require, on an average industry fleet wide basis, a range from 48.7–49.7 mpg in model year 2025. EPA confirmed the appropriateness of its final MY 2022-2025 standards in a Mid-Term and Final Evaluation in 2016 and 2017.[22]

Subsequently in 2017, EPA Administrator Scott Pruitt and Transportation Secretary Elaine L. Chao issued a joint notice announcing EPA's conclusion that it would reconsider its Final Determination in order to allow additional consultation and coordination with NHTSA in support of a national harmonized program.[23] In 2018, NHTSA and EPA issued a notice of proposed rulemaking (NPRM) (also referred to as the "SAFE Vehicles" NPRM) in which the agencies proposed revising the MY 2021 light-duty fuel economy and CO_2 standards and issuing new standards for MYs 2022–2026.[24] In the 2020 SAFE Vehicles Final Rule, the agencies amended MY 2021 standards and established standards for MYs 2022–2026 that would increase in stringency at 1.5 percent per year from 2020 levels.

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[21] *2017 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions and Corporate Average Fuel Economy Standards*, 77 FR 62623 (Oct. 15, 2012).
[22] *Proposed Determination on the Appropriateness of the Model Year 2022-2025 Light-Duty Vehicle Greenhouse Gas Emissions Standards Under the Midterm Evaluation*, 81 FR 87927 (Dec. 6, 2016); *Final Determination on the Appropriateness of the Model Year 2022-2025 Light-Duty Vehicle Greenhouse Gas Emissions Standards Under the Midterm Evaluation*, 81 FR 87927 (Jan. 12, 2017).
[23] *Notice of Intention to Reconsider the Final Determination of the Mid-Term Evaluation of Greenhouse Gas Emissions Standards for Model Year 2022-2025 Light Duty Vehicles*, 82 FR 14671 (Mar. 22, 2017).
[24] *The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks; Notice of Proposed Rulemaking*, 83 FR 42986 (Aug. 24, 2018).

On January 20, 2021, President Biden issued E.O. 13990, *Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis*,[25] which directed NHTSA and EPA to consider publishing for notice and comment a proposed rule suspending, revising, or rescinding the SAFE Vehicles Final Rule by July 2021. Though E.O. 13990 prompted NHTSA's review, NHTSA exercised its own authority, consistent with its statutory factors, to amend the CAFE standards for MY 2024–2026 passenger cars and light trucks in a final rule. This action reflects a conclusion significantly different from the conclusion that NHTSA reached in the 2020 SAFE Vehicles Final Rule. NHTSA concluded that significantly more stringent standards were maximum feasible. The amended CAFE standards increased in stringency for both passenger cars and light trucks, by 8 percent per year for MYs 2024-2026. While E.O. 13990 directed the review of CAFE standards for MYs 2021-2026, NHTSA retained the existing CAFE standards for MYs 2021-2023 in light of EPCA's requirement that amendments that make an average fuel economy standard more stringent be prescribed at least 18 months before the beginning of the model year to which the amendment applies.[26]

b. FE Standards for HD Pickup Trucks and Vans

EISA also provided the DOT and NHTSA authority to implement, via rulemaking and regulations, "a commercial medium- and heavy-duty on-highway vehicle[27] and work truck[28] fuel efficiency improvement program designed to achieve the maximum feasible improvement."[29] This program includes on-highway vehicles with a gross vehicle weight rating (GVWR) of 10,000 pounds or more and work trucks rated between 8,500 to 10,000 pounds GVWR. This provision also directs NHTSA to "adopt and implement appropriate test methods, measurement

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[25] Executive Order 13990, Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis, 86 FR 7037 (Jan. 25, 2021).
[26] 49 U.S.C. 32902(g)(2).
[27] EISA added the following definition to the automobile fuel economy chapter of the U.S. Code: "commercial medium- and heavy-duty on-highway vehicle" means an on-highway vehicle with a gross vehicle weight rating of 10,000 pounds or more. 49 U.S.C. 32901(a)(7).
[28] EISA added the following definition to the automobile fuel economy chapter of the U.S. Code: "work truck" means a vehicle that – (A) is rated at between 8,500 and 10,000 pounds gross vehicle weight; and (B) is not a medium-duty passenger vehicle (as defined in section 86.1803–01 of title 40, Code of Federal Regulations, as in effect on the date of the enactment of [EISA]). 49 U.S.C. 32901(a)(19).
[29] 49 U.S.C. 32902(k)(2).

metrics, fuel economy standards, and compliance and enforcement protocols that are appropriate, cost-effective, and technologically feasible for commercial medium- and heavy-duty on-highway vehicles and work trucks."[30] This authority permits NHTSA to set "separate standards for different classes of vehicles."[31]

On May 21, 2010, President Obama issued a memorandum to the Secretary of Transportation, the Secretary of Energy, the Administrator of EPA, and the Administrator of NHTSA that called for coordinated regulation of the heavy-duty vehicle market segment under EISA and under the Clean Air Act.[32] NHTSA and EPA met that directive in August 2011 by finalizing first-of-a-kind standards for new HD engines and vehicles, as part of a comprehensive HD National Program to reduce GHG emissions and fuel consumption for HD vehicles, in MYs 2014 through 2018 ("Phase 1").[33] The performance-based standards created a national program requiring manufacturers to meet targets for fuel efficiency and greenhouse gas emissions. The agencies estimated that the Phase 1 standards would save vehicle owners and operators an estimated $50 billion in fuel costs over the lifetime of those vehicles while also reducing oil consumption by a projected 530 billion barrels and greenhouse gas pollution by approximately 270 million metric tons.[34]

Building on the success of Phase 1 of the program, in a February 18, 2014, Presidential Announcement, President Obama directed NHTSA and EPA to finalize the next phase of HD

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[30] *Id.*
[31] *Id.*
[32] *See* The White House, Office of the Press Secretary, *Presidential Memorandum Regarding Fuel Efficiency Standards* (May 21, 2010), *available at* http://www.whitehouse.gov/the-press-office/presidential-memorandum-regarding-fuel-efficiency-standards (last accessed April 25, 2014); *see also* The White House, Office of the Press Secretary, *President Obama Directs Administration to Create First-Ever National Efficiency and Emissions Standards for Medium- and Heavy-Duty Trucks* (May 21, 2010), *available at* http://www.whitehouse.gov/the-press-office/president-obama-directs-administration-create-first-ever-national-efficiency-and-em (last accessed April 25, 2014).
[33] *See Greenhouse Gas Emissions Standards and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles*, 76 FR 57106 (September 15, 2011).
[34] *See White House Announces First Ever Oil Savings Standards for Heavy Duty Trucks, Buses* (August 9, 2011), *available at* http://www.nhtsa.gov/About+NHTSA/Press+Releases/2011/White+House+Announces+First+Ever+Oil+Savings+Standards+for+Heavy+Duty+Trucks,+Buses (last accessed April 28, 2014). For more information on the rulemaking, *see also* EPA Regulatory Announcement, *EPA and NHTSA Adopt First-Ever Program to Reduce Greenhouse Gas Emissions and Improve Fuel Efficiency of Medium- and Heavy-Duty Vehicles* (August 2011), *available at* http://www.epa.gov/otaq/climate/documents/420f11031.pdf (last accessed April 28, 2014).

vehicle fuel efficiency and greenhouse gas standards by March 31, 2016.[35] NHTSA and EPA met that directive in October 2016 by finalizing standards for new HD engines and vehicles in MYs 2018 and beyond ("Phase 2"). NHTSA conducted the Phase 2 rulemaking in consultation with EPA and DOE. The Phase 2 standards were expected to further reduce GHG and increase fuel efficiency for on-road heavy-duty vehicles. NHTSA's fuel consumption standards and EPA's carbon dioxide (CO_2) emissions standards were tailored to each of the three current regulatory categories of heavy-duty vehicles: (1) Combination Tractors; (2) Heavy-duty Pickup Trucks and Vans; and (3) Vocational Vehicles, as well as gasoline and diesel heavy-duty engines. In addition, the agencies added new standards for combination trailers. EPA's hydrofluorocarbon emissions standards that currently apply to air conditioning systems in tractors, pickup trucks, and vans, were also be applied to vocational vehicles.

c. Current Action

On August 5, 2021, President Biden issued Executive Order (E.O.) 14037, Strengthening American Leadership in Clean Cars and Trucks, which directed NHTSA and EPA to, as appropriate and consistent with applicable law, take actions under EPCA/EISA and the Clean Air Act (CAA) to set standards for light-, medium-, and heavy-duty vehicles.[36] Specifically, the E.O. directed NHTSA to consider beginning work on rulemakings to "establish new fuel economy standards for passenger cars and light-duty trucks beginning with model year 2027 and extending through and including at least model year 2030,"; "establish new fuel efficiency standards for heavy-duty pickup trucks and vans beginning with model year 2028 and extending through and including at least model year 2030,"; and "establish new fuel efficiency standards for medium- and heavy-duty engines and vehicles to begin as soon as model year 2030."

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[35] *See FACT SHEET—Opportunity For All: Improving the Fuel Efficiency of American Trucks – Bolstering Energy Security, Cutting Carbon Pollution, Saving Money and Supporting Manufacturing Innovation* (February 18, 2014), *available at* http://www.whitehouse.gov/the-press-office/2014/02/18/fact-sheet-opportunity-all-improving-fuel-efficiency-american-trucks-bol (last accessed April 28, 2014); *Improving the Fuel Efficiency of American Trucks — Bolstering Energy Security, Cutting Carbon Pollution, Saving Money and Supporting Manufacturing Innovation* (February 2014), *available at* http://www.whitehouse.gov/sites/default/files/docs/finaltrucksreport.pdf (last accessed April 28, 2014).

[36] 86 FR 43583 (August 10, 2021).

In accordance with E.O. 14037, but pursuant to the agency's own exercise of authority consistent with EPCA/EISA, NHTSA intends to propose CAFE standards for MYs 2027 and beyond passenger cars and light trucks, and FE standards for MYs 2029 and beyond HD pickup trucks and vans in an upcoming NPRM. In accordance with EPCA/EISA's lead time requirements, NHTSA is statutorily required to issue a final rule for MY 2027 CAFE standards no later than April, 2025,[37] and a final rule for MY 2029 FE standards no later than July 2025.[38]

As with the past CAFE and FE rules described above, NHTSA will use the CAFE Model and other analytic tools to determine the impacts of different levels of CAFE and FE stringency. Many of the technologies that vehicle manufacturers use to improve fuel economy and fuel efficiency on LD and HD pickup trucks and vans are similar, and the CAFE Model is (and has also historically been) equipped to analyze the impacts of different levels of stringency for both types of vehicles.

Pursuant to NEPA, NHTSA will prepare an EIS to evaluate the potential environmental impacts of its proposed action. This Notice of Intent initiates the scoping process for the EIS under NEPA and its implementing regulations,[39] and under NHTSA's NEPA regulations.[40] Specifically, this Notice of Intent requests public input on the scope of NHTSA's NEPA analysis, including the alternatives considered and the significant environmental issues relating to more stringent CAFE standards for LD and HD pickup trucks and vans.

II. Considerations for the Range of Alternatives

In an upcoming NPRM, NHTSA intends to propose new CAFE and FE standards, as described above. This notice briefly describes a variety of possible alternatives that are currently under consideration by the agency and seeks input from the public about these alternatives and

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[37] 49 U.S.C. 32902(a) requires standards to be prescribed at least 18 months before the beginning of each model year; for CAFE purposes, NHTSA and manufacturers have historically considered April of the prior calendar year to mark 18 months before the beginning of a model year.

[38] 49 U.S.C. 32902(k)(3)(A) requires the commercial medium- and heavy-duty on-highway vehicle and work truck fuel economy standard to provide not less than 4 full model years of regulatory lead-time.

[39] 42 U.S.C. 4321–4347; 40 CFR Pt. 1500-1508.

[40] *See* 40 CFR §§ 1501.7, 1508.22; 49 CFR § 520.21(g).

about whether other alternatives should be considered as NHTSA proceeds with the rulemaking and the EIS.

a. Framing the Range of Alternatives

The purpose of and need for an agency's action inform the reasonable range of alternatives to be considered in its NEPA analysis.[41] In developing alternatives for analysis in the EIS, NHTSA must consider EPCA's requirements for setting CAFE standards and EISA's requirements for setting FE standards.

NHTSA sets CAFE standards as part of a comprehensive energy policy established by EPCA (and amended by EISA) with the purposes of conserving energy and of addressing energy independence and security by reducing U.S. reliance on foreign oil. EPCA requires NHTSA to determine what level of CAFE stringency would be the "maximum feasible" for each model year, a determination made based on the consideration of four statutory factors: technological feasibility, economic practicability, the effect of other standards of the Government on fuel economy, and the need of the United States to conserve energy.[42]

With regards to the FE standards for medium and heavy duty trucks, EISA requires that: (1) The program must be "designed to achieve the maximum feasible improvement"; (2) the various required aspects of the program must be appropriate, cost-effective, and technologically feasible for MD/HD vehicles; and (3) the standards adopted under the program must provide not less than four model years of lead time and three model years of regulatory stability.[43] In considering these various requirements, NHTSA will also account for relevant environmental and safety considerations.

The range of alternatives will reflect differences in the degree of technology adoption across the fleet, in costs to manufacturers and consumers, and in conservation of energy and related impacts to the environment. For example, the most stringent average annual fuel

[41] 40 CFR § 1502.13.
[42] 49 U.S.C. 32902(f).
[43] 49 U.S.C. 32902(k)(2) and (3).

economy standard and the most stringent fuel efficiency standard NHTSA will evaluate would require greater adoption of fuel-saving technology across the fleet, including more advanced technology, than the least stringent standard NHTSA will evaluate. As a result, the most stringent alternative for both the CAFE standard and FE standard would impose greater costs and achieve greater energy conservation.

More specifically, for CAFE standards, NHTSA will analyze the lower bound and upper bound of a range of average annual fuel economy standards that would satisfy EPCA's requirement that the standards be "maximum feasible" for each model year, based on the different ways NHTSA could weigh EPCA's four statutory factors. Generally speaking, more stringent average annual fuel economy standards might weigh energy conservation and environmental considerations more heavily and economic practicability concerns less heavily. In contrast, less stringent standards might weigh economic practicability concerns more heavily and energy conservation and environmental considerations less heavily.

For setting FE standards, NHTSA will also analyze action alternatives calculated at the lower point and at the upper point of a range of FE standards that would satisfy EISA's requirements of increasing the fuel efficiency of HD pickup trucks and vans. The lower and upper bounds of the range of reasonable alternatives would reflect different ways NHTSA could weigh the considerations before the agency in the rulemaking. The lower bound would reflect the least stringent of the range of alternatives to achieve the maximum feasible improvement in fuel efficiency. On the other hand, the upper bound represents the most stringent fuel efficiency improvement.

The range of alternatives would provide a broad range of information for NHTSA to use in evaluating and weighing the statutory factors in EPCA and EISA. The range would also assist the decision-maker in considering the differences and uncertainties in the way in which key economic inputs (e.g., the price of fuel and the social cost of carbon) and technological inputs are estimated or valued.

b. Considerations on Levels of Standards for Regulatory Classes

Within the range of alternatives, NHTSA may consider setting more stringent standards for the earlier years of the rule than for the later years, or, alternatively, setting less stringent standards for the earlier years of the rule than for the later years, depending on our assessment of what would be "maximum feasible" for those time periods for each fleet. The changes in stringency considered in the lower and upper bounds may be defined as "average" changes in stringency; the preferred alternative and actual standards may either be constant throughout the period or may vary from year to year. However, analysis of the average yearly change over that period would provide sufficient environmental analysis to bracket the range of environmental impacts of reasonable alternatives and allow for a reasoned choice among the alternatives presented. NHTSA also may select "maximum feasible" fuel economy standards for some or all model years that decrease or remain the same as compared to the immediately prior model year(s).

NHTSA may also consider setting standards for passenger cars and light trucks at different rates, or that change over different rates during the timeframe of the rule. For HD pickup trucks and vans, NHTSA may consider setting pickup truck and van standards at different rates. NHTSA may also consider setting different levels of standards for HD pickup trucks and vans that are powered by different fuels (e.g., in past MD/HD FE rules, NHTSA set separate standards for gasoline- and diesel-powered vehicles).

c. Considerations on Industry Lead Time

As noted above, NHTSA's statutory authority allows the agency to take final action prescribing CAFE standards in increments of no more than five model years,[44] with no limitation on the number of model years of standards that NHTSA can set for HD pickup trucks and vans. Consistent with the aims of EPCA/EISA, which NHTSA interprets to be improving the efficiency of internal combustion engine vehicles, and with the aims outlined in E.O. 14037,

[44] 49 U.S.C. 32902(b)(3).

NHTSA will consider a combination of proposed and potentially augural standards to accomplish these goals. As discussed above, NHTSA has used augural standards in the past to give the automotive industry as much lead time as possible to respond to a set of coordinated federal standards. As discussed below, NHTSA seeks comment on whether and how the agency could use a combination of proposed and augural standards to fulfill the goals stated herein.

d. Considerations on Standard Attributes and Form

In the previous CAFE rulemaking, for the LD program, NHTSA used vehicle footprint[45] as the attribute. The standards were defined as footprint "curves" for passenger cars and light trucks in each model year, where vehicles of different footprints have specific fuel economy "targets," with larger vehicles (and light trucks) generally having lower fuel economy targets than smaller vehicles (and passenger cars), reflecting their fuel economy capabilities.[46] In the previous MD/HD rulemaking, for HD pickup trucks and vans, NHTSA used work factor[47] as the metric for setting HD pickup trucks and vans FE standards. NHTSA established separate curves for diesel and gasoline HD pickup trucks and vans. As discussed further below, NHTSA seeks comment on the attribute used to set CAFE and FE standards, possible other attributes that could be used to set CAFE and FE standards, the shape of the standards curves, and other programmatic aspects that could help fulfill the goals outlined herein.

e. Other Programmatic Considerations

As with any CAFE and FE rulemaking, NHTSA will also consider programmatic aspects other than stringency (e.g., flexibilities and vehicle classification) that may affect model years including those for which NHTSA would set CAFE and FE standards.

III. Range of Alternatives

NHTSA is considering the following alternatives for analysis in the Draft EIS:

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[45] Footprint, which is a measure of vehicle size, is calculated by multiplying a vehicle's wheelbase by its track width.

[46] Vehicle models of the same fleet but made by different manufacturers would have the same fuel economy target if they had the same vehicle footprint (i.e., the quantity of the attribute upon which the standards would be based).

[47] Work factor is an attribute that combines a vehicle's payload, towing capabilities, and the presence of 4-wheel drive.

a. No Action Alternative

NEPA requires agencies to consider a "no action" alternative in their NEPA analyses and to compare the effects of not taking action with the effects of the reasonable action alternatives in order to demonstrate the different environmental effects of the action alternatives.[48] In this EIS, with regards to CAFE standards, NHTSA will consider a "no action" alternative, which assumes for purposes of NEPA analysis that NHTSA would issue a rule that would continue the current CAFE standards for MY 2026. Given that NHTSA must set new CAFE standards and may not strictly take no action on fuel economy,[49] the agency has determined that, for this rulemaking, the closest analogue to a true "no action" alternative would be to continue the already existing and enforceable standards indefinitely without further change. The no action alternative would also take into account the California Air Resources Board's (CARB) Advanced Clean Cars (ACC) II program, set to begin in model year 2026. The ACC II program requires an increasing number of zero-emission vehicles sold in the state through through 2035, at which point all new passenger cars, trucks, and SUVs sold in California will be zero emissions. Several other states have formally adopted California's vehicle emissions standards under section 177 of the Federal Clean Air Act, and are assumed to continue to do so with ACC II.

With regards to FE standards, NHTSA will consider a "no action" alternative, which assumes, for purposes of NEPA analysis, that NHTSA would not issue a new rule regarding HD pickup trucks and vans fuel efficiency standards. Under these circumstances, the existing fuel efficiency standards established for the end of Phase 2 would persist until NHTSA takes

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[48] *See* 40 CFR §§ 1502.2(e), 1502.14. CEQ has explained that "[T]he regulations require the analysis of the no action alternative *even if the agency is under a court order or legislative command to act*. This analysis provides a benchmark, enabling decision makers to compare the magnitude of environmental effects of the action alternatives. … Inclusion of such an analysis in the EIS is necessary to inform Congress, the public, and the President as intended by NEPA. [*See* 40 CFR § 1500.1(a).]" *Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations*, 46 FR 18026 (1981) (emphasis added).

[49] *See* 49 U.S.C. 32902(a). CEQ has explained that "[T]he regulations require the analysis of the no action alternative *even if the agency is under a court order or legislative command to act*. This analysis provides a benchmark, enabling decisionmakers to compare the magnitude of environmental effects of the action alternatives. . . . Inclusion of such an analysis in the EIS is necessary to inform the Congress, the public, and the President as intended by NEPA. [*See* 40 CFR § 1500.1(a).]" *Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations*, 46 FR 18026 (1981) (emphasis added).

additional action. The no action alternative would also take into account CARB's Advanced Clean Trucks (ACT) program, set to begin in model year 2024. The ACT program stipulates that manufacturers must electrify specified percentages of their heavy-duty fleets in order to continue selling heavy-duty vehicles in California and other states that have formally adopted the program.

NHTSA will refer to this alternative that includes the conditions described for CAFE and FE standards as the "No Action Alternative" or as the "baseline."

b. Action Alternatives

The EIS will also analyze action alternatives calculated at the lower point and at the upper point of the range the agency believes encompasses reasonable alternatives meeting the purpose and need of the proposed action. These lower and upper "bounds" or "brackets" will account for various potential structures for the CAFE standards for passenger cars and light trucks and for the FE standards for the HD pickup trucks and vans and various levels of stringency for the regulatory categories (see more about the bounds discussed in this notice above). These alternatives would bracket the range of actions the agency may select. In sum, in its final rule, NHTSA would be able to select from any stringency level within that range. NHTSA seeks public comments on the stringency levels at which to define the lower and upper bounds of this range of reasonable alternatives.

c. Preferred Alternative

In the EIS, NHTSA intends to identify a Preferred Alternative, which may be within the level of stringency that falls within the range being considered or may be the lower or upper bound levels of stringency. The Preferred Alternative would reflect what the agency believes is the "maximum feasible" fuel economy standards for passenger cars and light trucks and the "maximum feasible improvement" required under EISA for FE standards. The Preferred Alternative may include improvements that are constant throughout the regulatory period or that vary from year to year (and from segment to segment) in accordance with predetermined

stringency increases that would be established by this rule. However, the overall stringency and impacts will fall at or between the lower and upper brackets discussed above. NHTSA has not yet identified its Preferred Alternative.

IV. Consideration of Expected Impacts

The scoping process initiated by this notice seeks to determine "the range of actions, alternatives, and impacts to be considered" in the EIS and to identify the most important issues for analysis involving the potential environmental impacts of NHTSA's CAFE and FE standards.[50] NHTSA's NEPA analysis will consider direct, indirect, and cumulative effects of the proposed action and those of reasonable alternatives.

While the main focus of NHTSA's prior CAFE EISs (*i.e.*, the CAFE EISs for MYs 2017-2025,[51] MY 2021-2026,[52] and MYs 2024-2026,[53] and the HD Phase 1[54] and Phase 2[55] EIS) was the quantification of impacts to energy, air quality, and climate, and qualitative analysis of life-cycle impacts and cumulative impacts, it also addressed other potentially affected resources. NHTSA conducted a qualitative review of impacts on resources such as water resources, biological resources, land use, hazardous materials, safety, noise, historic and cultural resources, and environmental justice.

Similar to past EIS practice, NHTSA plans to analyze environmental impacts related to fuel and energy use, emissions and their effects on climate change and the environment,[56] air

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[50] *See* 40 CFR §§ 1500.5(f), 1501.7, 1501.9.
[51] *Final Environmental Impact Statement, Corporate Average Fuel Economy Standards, Passenger Cars and Light Trucks, Model Years 2017-2025*, Docket No. NHTSA-2011-0056-2089 (July 2012).
[52] *Final Environmental Impact Statement, SAFER Affordable Fuel-Efficient Vehicles Rules, Passenger Cars and Light Trucks, Model Years 2021-2026*, Docket No. NHTSA-2011-0056-2089 (July 2012).
[53] *Final Supplemental Environmental Impact Statement, Corporate Average Fuel Economy Standards, Passenger Cars and Light Trucks, Model Years 2024-2026*, Docket No. NHTSA-2021-0054 (March 2022).
[54] *Final Environmental Impact Statement, Medium- and Heavy-Duty Fuel Efficiency Improvement Program, Model Years 2014-2018*, Docket No. NHTSA-2010-0079-0151 (June 2011).
[55] *Final Environmental Impact Statement, Medium- and Heavy-Duty Fuel Efficiency Improvement Program, Model Years 2018-2027*, Docket No. NHTSA-2014-0074 (August 2016).
[56] NHTSA is planning to include in this EIS a quantitative analysis to estimate the impact of the alternatives on ocean acidification based on changes in atmospheric CO_2 concentrations.

quality,[57] natural resources, and the human environment. NHTSA is considering examining life-cycle impacts consistent with its past EISs and looking at tools that may be available for quantitative analysis. NHTSA will consider the direct and indirect impacts of the proposed CAFE and FE standards, as well as the cumulative effects[58] of the proposed CAFE and FE standards together with any past, present, and reasonably foreseeable future actions.

Estimates of fuel used as a result of different levels of standards are used as inputs for the EIS's climate modeling. As with any model, uncertainties exist in modeling potential future climate change scenarios. Because all analysis of possible future outcomes necessarily involves uncertainty, including what NHTSA will consider for this rulemaking and EIS, NHTSA anticipates uncertainty in its estimates of the potential environmental impacts related to climate change. To account for this uncertainty, NHTSA plans to evaluate a range of potential global temperature changes that may result from changes in fuel and energy consumption and GHG emissions attributable to new CAFE and FE standards. It is difficult to quantify how the specific impacts due to the potential temperature changes attributable to new CAFE and FE standards may affect many aspects of the environment. NHTSA will endeavor to gather the key relevant and credible information using a transparent process that employs the best available peer-reviewed science and economics. NHTSA invites public comments on the scope of its analysis on climate change impacts, including citations to peer-reviewed scientific articles to frame and analyze the relevant issues.

In order to streamline its documentation and eliminate redundancy, NHTSA plans not to include analyses of either monetized health benefits in its air quality analysis or monetized

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[57] Consistent with past practice, in addition to the air quality analysis presented in the Draft and Final EIS, NHTSA will conduct a national-scale photochemical air quality modeling and health risks assessment that will be included in the Final EIS, but not the Draft EIS, due to the substantial time required to complete the analysis. In addition, because of the lead time required for this analysis, it will be based on the alternatives presented in the Draft EIS, but not the alternatives as they may be revised for the Final EIS. Still, NHTSA believes the analysis will provide meaningful information for the decisionmaker and the public.

[58] In accordance with CEQ regulations, cumulative impacts are "the impacts on the environment that result from the incremental impacts of the action when added to the impacts of other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time." 40 CFR § 1508.1.

climate change benefits in its climate change analysis in the EIS, as both of those analyses will be included in its RIA (consistent with past practice), which is subject to public notice and comment concurrently with the EIS. NHTSA will incorporate the analyses in the RIA by reference in the EIS consistent with the requirements of the CEQ implementing regulations.[59] The EIS will continue to present analyses on air quality emissions (including non-monetized health impacts), GHG emissions, and climate change impacts (including impacts on CO_2 concentrations, temperature, sea-level rise, and precipitation).

NHTSA expects to rely on previously published EISs, incorporating material by reference "when the effect will be to cut down on bulk without impeding agency and public review of the action."[60] Therefore, the NHTSA NEPA analysis and documentation will incorporate by reference relevant materials, including portions of the agency's prior NEPA documents, where appropriate.

V. The Scoping Process

NHTSA's NEPA analysis will consider the direct, indirect, and cumulative environmental effects of proposed standards and those of reasonable alternatives. The scoping process initiated by this notice seeks public comment on the range of alternatives under consideration, on the impacts to be considered, and on the most important matters for in-depth analysis in the EIS. All comments relevant to the scoping process are welcome.

NHTSA invites the public to participate in the scoping process[61] by submitting written comments concerning the appropriate scope of the NEPA analysis for the proposed CAFE and FE standards to the docket number identified in the heading of this notice, using any of the

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[59] 40 CFR § 1501.12.

[60] *Id.*

[61] Consistent with NEPA and implementing regulations, NHTSA is sending this notice directly to: (1) Federal agencies having jurisdiction by law or special expertise with respect to the environmental impacts involved or authorized to develop and enforce environmental standards; (2) the Governors of every State, to share with the appropriate agencies and offices within their administrations and with the local jurisdictions within their States; (3) organizations representing state and local governments and Indian tribes; and (4) other stakeholders that NHTSA reasonably expects to be interested in the NEPA analysis for the MY 2028–2032 CAFE standards. *See* 42 U.S.C. 4332(2)(C); 49 CFR § 520.21(g); 40 CFR §§ 1501.7, 1506.6.

methods described in the **ADDRESSES** section of this notice. NHTSA does not plan to hold a public scoping meeting because, based on prior experience, written comments will be effective in identifying and narrowing the considerations for analysis.

a. Comments on the Range of Alternatives

NHTSA invites comments to ensure that the agency considers a full range of reasonable alternatives in setting new CAFE standards for MYs 2027 and beyond passenger cars and light trucks and new FE standards for MYs 2029 and beyond HD pickup trucks and vans. Comments may go beyond the approaches and information that NHTSA described above for developing the alternatives. NHTSA understands that there are a variety of potential alternatives that could be considered that fit within the purpose and need for the proposed rulemaking, as set forth in both the EPCA and EISA. NHTSA is therefore interested in comments on how best to structure or describe proposed alternatives for purposes of evaluation under NEPA. Subject to the statutory restraints under the EPCA and EISA, a variety of potential alternatives could be considered within the purpose and need for the proposed rulemaking, each falling along a theoretically infinite continuum of potential standards. As described above, NHTSA plans to address this issue by identifying alternatives at the upper and lower bounds of a range within which we believe the statutory requirement for "maximum feasible improvement"[62] would be satisfied, as well as identifying and analyzing the impacts of a preferred alternative. In this way, NHTSA expects to bracket the potential environmental impacts of the standards it may select.[63]

The agency may modify the proposed alternatives that will be analyzed in depth based upon the comments received during the scoping process and upon further agency analysis. When suggesting an approach to developing alternatives that the agency should analyze, please explain the recommended way to balance EPCA's factors (technological feasibility, economic

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[62] *See* 49 U.S.C. 32902(k)(2).

[63] Should NHTSA ultimately choose to set standards at levels other than the Preferred Alternative, we believe that this bracketing will properly inform the decision-maker, so long as the standards are set within its bounds. This methodology permits the analysis of a range of reasonable alternatives the agency may pick, while providing the agency flexibility to select the alternative based on the most up-to-date information and analyses available at that time.

practicability, the effect of other motor vehicle standards of the Government on fuel economy, and the need of the United States to conserve energy).[64] Similarly, when suggesting an approach to developing alternatives for HD pickup trucks and vans, please explain the recommended way to balance EISA's factors ((1) The program must be "designed to achieve the maximum feasible improvement"; (2) the various required aspects of the program must be appropriate, cost-effective, and technologically feasible for MD/HD vehicles; and (3) the standards adopted under the program must provide not less than four model years of lead time and three model years of regulatory stability).

b. Comments on Environmental Effects

NHTSA invites comments to ensure that the agency identifies the environmental impacts and focuses its analyses on all the potentially significant impacts related to each alternative. Comments may go beyond the approaches and information that NHTSA described above for identifying the potentially significant environmental effects. The agency may modify the environmental effects that will be analyzed in depth based upon the comments received during the scoping process and upon further agency analysis. When suggesting additional resource areas to analyze, please explain how the recommendation will add value to the public and decisionmaker in looking at the environmental impacts of the range of identified alternatives.

Two important purposes of scoping are identifying the significant considerations that merit in-depth analysis in the EIS and identifying and eliminating from detailed analysis the matters that are not significant and therefore require only a brief discussion in the EIS.[65] In light of these purposes, written comments should include an internet citation (with a date last visited) to each study or report cited in the comments, if one is available. If a document cited is not available to the public online, the commenter should either provide sufficient bibliographical information to allow NHTSA to locate and obtain a copy of the study or attach a copy to the

[64] Note that NHTSA is statutorily prohibited from considering statutorily-provided flexibility mechanisms in determining what standards would be maximum feasible. 49 U.S.C. 32902(h).
[65] 40 CFR §§ 1500.4(g), 1502.2(b).

comments.[66] Commenters should indicate how each document cited or attached to their comments is relevant to the NEPA analysis and indicate the specific pages and passages in the attachment that are most informative.

The more specific the comments are, and the more support they provide in identifying peer-reviewed scientific studies and reports, the more useful the comments will be to the NEPA process. For example, if a comment identifies an additional area of impact or environmental concern that NHTSA should analyze, or an analytical tool or model that NHTSA should use to evaluate these environmental impacts, the comment should clearly describe it and provide a reference to a specific peer-reviewed scientific study, report, tool, or model, if possible. Specific, well-supported comments will help the agency prepare an EIS that is focused and relevant and will serve NEPA's overarching aims of making high quality information available to decisionmakers and the public by "avoid[ing] useless bulk in statements and . . . concentrate[ing] effort and attention on important issues."[67] By contrast, mere assertions that the agency should evaluate broad lists or categories of concerns, without support, will not assist the scoping process for the proposed standards.

Please be sure to reference the docket number identified in the heading of this notice in any submitted comments. All comments and materials received, including the names and addresses of the commenters who submit them, will become part of the administrative record and will be posted on the web at http://www.regulations.gov.

c. Schedule for Decision-Making

Separate *Federal Register* notices published by EPA will announce the availability of the Draft EIS, which will be available for public comment, and the Final EIS. NHTSA will issue the Draft EIS concurrently with its NPRM. In addition, NHTSA will simultaneously issue a Final EIS and Record of Decision (Final Rule), pursuant to 49 U.S.C. 304a, unless it is determined that

[66] Please be mindful of copyright restrictions when attaching documents to any comments, as they will be made publicly available in the agency's docket.
[67] 40 CFR § 1502.15.

statutory criteria or practicability considerations preclude concurrent issuance. NHTSA also plans to continue to post information about the NEPA process and this CAFE rulemaking on its website (http://www.nhtsa.gov).

Issued in Washington, D.C. under authority delegated in 49 CFR parts 1.95, 501.5 and 501.8.

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Milton E. Cooper,

Director, Rulemaking Operations.

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